

1 \$50,000 bond.

2 The parties now dispute the proper terms of such an
3 injunction. This order resolves that dispute.

4 San Francisco's ordinance has not yet become effective.
5 To enact an ordinance adopted through voter initiative, such as the
6 San Francisco ordinance, the board of supervisors must certify the
7 results of the election after receiving the vote count from the
8 City's election department. San Francisco argues that the court
9 lacks the power to order the board of supervisors to refrain from
10 such certification, contending that this is a legislative function
11 not subject to judicial intervention. San Francisco is incorrect.

12 At oral argument on November 15, 1999, San Francisco's
13 counsel conceded that certification of the election results was a
14 ministerial act, rather than an exercise of legislative discretion
15 by the supervisors. More importantly, suspending the effectiveness
16 of the ordinance is the only practical means of preventing San
17 Francisco from implementing an enactment likely preempted by
18 federal law. Furthermore, San Francisco and its citizens are amply
19 protected by the escrow provisions of the court's injunction. In
20 the event the court's reading of federal law proves to be
21 erroneous, citizens can apply for and receive refunds of any ATM
22 fee obtained by plaintiffs during the pendency of this litigation
23 in violation of the ordinance.

24 As the court is well within its jurisdiction to prevent
25 an intrusion by the cities into an area subject to federal
26 preemption, it is appropriate to direct that San Francisco and all
27 related defendants refrain from enrolling, making effective or
28 otherwise implementing the challenged ordinance. The court is

1 within its power to enjoin the board of supervisors and the other
2 San Francisco defendants from taking such an action.

3 Santa Monica's ordinance became effective on November 11,
4 1999. Plaintiffs argue that for the injunction to have any
5 meaning, it must protect them against the possibility of citizen
6 suits which are provided for under the ordinance. Santa Monica
7 claims that the court does not have the power to enjoin citizen ATM
8 users, or to force the Santa Monica city council to revoke the
9 ordinance. To be sure, the court cannot enjoin individuals who are
10 not before it. The court disagrees, however, that it lacks
11 authority to prevent implementation of the ordinance while the
12 injunction remains in effect. Temporary suspension of a likely
13 unconstitutional ordinance in no way improperly interferes with the
14 municipal functions of Santa Monica.

15 By its terms, the Santa Monica ordinance purports to
16 authorize persons assessed the proscribed ATM fees to seek judicial
17 relief in the state courts. Hence, enforcement of the ordinance is
18 essentially turned over to private parties. While the court cannot
19 enjoin such private parties, none of whom is a party to this
20 litigation, the court possesses ample authority to prevent Santa
21 Monica from purporting to deputize its citizens and others to
22 conduct litigation to enforce an invalid enactment. By insisting
23 that Santa Monica need not abide by federal law, Santa Monica goes
24 too far. Santa Monica's proper avenue is an appellate challenge of
25 the injunction.

26 Now, therefore, pending resolution of this action
27 defendants are, and each of them is, ENJOINED AND SHALL FORTHWITH
28 CEASE AND DESIST from taking any action to place into effect, make

1 effective, enforce or otherwise implement or permit any person to
2 enforce or implement Proposition F, placed before the voters of the
3 City and County of San Francisco on November 2, 1999, and section
4 4.32.040 of the Municipal Code of the City of Santa Monica adopted
5 on or about October 12, 1999.

6 IT IS SO ORDERED.

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VAUGHN R. WALKER
United States District Judge
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